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Message Text

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53
ORIGIN L-03

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DRAFTED BY L/ARA:GCHESTER;L/HR:CRUNYON;ARA/ECA:FERONDON:
APPROVED BY ARA:HWSHLAUDEMAN
L/M:MALMBORG (DRAFT)
SCS:NPELLETREAU (SUBS)
S/S-S.MRS DENHAM
S/S-S:MRS.DENHAM
---------- 026640
R 211220Z OCT 76
FM SECSTATE WASHDC
TO AMEMBASSY BUENOS AIRES

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E.O. 11652: N/A

TAGS: PFOR, CASC, AR, US

SUBJECT: PROTEST OVER TREATMENT OF US CITIZENS IN
ARGENTINA

REF: B.A. 5980

1. EMBASSY IS REQUESTED TO DELIVER FOLLOWING PROTEST
NOTE TO MINISTRY OF FOREIGN AFFAIRS. THE NOTE PROTESTS
THE TREATMENT RECEIVED BY GWENDA MAE LOKEN LOPEZ, INCLUD-
ING HER CHARGES OF TORTURE, AND THE GOA'S REPEATED
FAILURE TO COMPLY WITH THE CONSULAR ACCESS PROVISIONS OF
THE VIENNA CONVENTION. LATTER PROBLEM ALSO APPLIED TO
FATHER JAMES WEEKS AND NOTE DEALS WITH FOREIGN MINIS-
TRY'S NOTE OF SEPTEMBER 14 CONCERNING HIS CASE (REFTEL).

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2. DEPARTMENT DOES NOT INTEND TO MAKE PUBLIC TEXT OF

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NOTE, ALTHOUGH ONCE NOTE HAS BEEN DELIVEREDWE WILL
CONFIRM, IF ASKED, THAT USG HAS FORMALLY PROTESTED LOPEZ
TREATMENT AS WELL AS THE PROBLEMS OF CONSULAR ACCESS.

3. BEGIN TEXT

THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS ITS
COMPLIMENTS TO THE MINISTRY OF FOREIGN AFFAIRS AND
WORSHIP TO THE REPUBLIC OF ARGENTINA AND WISHES TO MAKE
THE PRESENT
PROTEST IN THE CASE OF MRS. GWENDA MAE LOKEN LOPEZ, A
UNITED STATES CITIZEN WHO WAS ARRESTED ON APRIL 30, 1976
AND DETAINED IN ROSARIO AND BUENOS AIRES UNTIL HER
DEPORTATION FROM ARGENTINA ON SEPTEMBER 29, 1976.

MRS. LOPEZ HAS REPORTED TO OFFICIALS OF THE DEPARTMENT
OF STATE THAT SHE WAS NOT INFORMED OF HER RIGHT TO SEE
A US CONSULAR OFFICIAL FOLLOWING HER ARREST. UNDER
THE PROVISIONS OF ARTICLE 36(1)(B) OF THE VIENNA CON-
VENTION ON CONSULAR RELATIONS TO WHICH BOTH THE UNITED
STATES AND ARGENTINA ARE PARTIES, A UNITED STATES CITI-
ZEN WHO IS ARRESTED BY THE ARGENTINE AUTHORITIES IS TO
BE INFORMED WITHOUT DELAY OF HIS OR HER RIGHT TO HAVE
WITHOUT DELAY VISITS BY OFFICIALS WHO ARE TO BE
PROMPTLY NOTIFIED OF THE ARREST AND INCARCERATION. WITH
KNOWLEDGE OF THE RIGHT TO REQUEST AND RECEIVE A CONSULAR
VISIT, THE AMERICAN NATIONAL WOULD ORDINARILY MAKE THE
REQUEST AND ACCESS WOULD BE ACCORDED WITHOUT DELAY. WE
ASSUME THE FEDERAL AND PROVINCIAL POLICE, AS WELL AS
ANY OTHER OFFICIAL OF THE GOVERNMENT OF ARGENTINA WITH
POWERS OF ARREST, HAVE BEEN INFORMED AND ARE AWARE OF
THE PROVISIONS OF THE AFOREMENTIONED CONVENTION AND HAVE
BEEN APPROPRIATELY INSTRUCTED.

WE REGARD OUR MUTUAL OBLIGATIONS UNDER ARTICLE 36 OF THE
VIENNA CONVENTION AS OF VERY GREAT IMPORTANCE BOTH TO
OUR GOVERNMENT AND TO OUR RESPECTIVE NATIONALS. WE
CONSIDER THAT THEY MUST BE GIVEN FULL EFFECT. THE UNITED
STATES GOVERNMENT DOES NOT ACCEPT THE VIEW EXPRESSED IN
THE MINISTRY'S NOTE OF SEPTEMBER 14, 1976 REGARDING THE
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CASE OF FATHER WEEKS. THE MINISTRY ARGUED IN EFFECT
THAT ARTICLE 36 (2) OF THE VIENNA CONVENTION RECOGNIZES
THE LAW OF ARGENTINA PERMITTING INCOMMUNICADO DETENTION
IN THE EARLY STAGES OF AN INVESTIGATION AS A PROPER
BAR TO CONSULAR ACCESS.

THE DEPARTMENT OF STATE HAS INSTRUCTED THE EMBASSY ONCE
AGAIN TO CALL THE MINISTRY'S ATTENTION TO ARTICLE 36

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(2). IT IS THE VIEW OF THE UNITED STATES GOVERNMENT
THAT UNDER ARTICLE 36 (2) THE GOVERNMENT OF
ARGENTINA IS OBLIGATED TO ENABLE FULL EFFECT TO BE GIVEN
TO THE PURPOSE OF PROTECTING A NATIONAL FROM IMPROPER
TREATMENT, SINCE THIS IS A PRIMARY PURPOSE FOR ACCORDING
THE RIGHT OF ACCESS. MOREOVER, FOR THE SAME REASON,
NOTHING IN LOCAL LAW CAN OVERRIDE THE REQUIREMENT TO
ADVISE THE AMERICAN CITIZEN WITHOUT DELAY OF THAT
CITIZEN'S RIGHT UNDER ARTICLE 36(1)(B) RELATING TO
ACCESS.

THE EMBASSY IS GRAVELY CONCERNED ABOUT THE TREATMENT
MRS. LOPEZ ACTUALLY RECEIVED WHILE IN THE CUSTODY OF
THE POLICE FOLLOWING HER ARREST. IN PARTICULAR, MRS.
LOPEZ HAS DETAILED FOR OFFICIALS OF THE DEPARTMENT OF
STATE A NUMBER OF INSTANCES OF SEVERE MISTREATMENT,
INCLUDING TORTURE, AT THE HANDS OF THE POLICE IN THE
PERIOD BETWEEN HER ARREST ON APRIL 30 AND THE FIRST
VISIT OF A US CONSULAR OFFICER TO HER ON MAY 6, 1976.
AT THE TIME OF HER APPREHENSION, SHE WAS STRUCK AND,
SUBSEQUENTLY, SHE WAS PARTIALLY STRIPPED OF HER CLOTHES,
BLINDFOLDED, THREATENED WITH TORTURE, AND TORTURED WITH
AN ELECTRIC PROD AND IN OTHER WAYS.

THE EMBASSY MUST POINT OUT THAT THE OBLIGATION TO REFRAIN
FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT IS ONE THAT PERMITS OF NO DEROGATION.
THIS IS COMMONLY ACCEPTED BY ALL CIVILIZED STATES. MORE-
OVER, ON 9 DECEMBER 1975 THE UNITED NATIONS GENERAL
ASSEMBLY (BY CONSENSUS) IN GENERAL ASSEMBLY RESOLUTION
3452 ADOPTED SPECIFIC GUIDELINES FOR STATES IN DISCHARG-
ING THEIR OBLIGATIONS TO PROTEST AGAINST TORTURE.

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THE EMBASSY REGARDS MRS. LOPEZ' TREATMENT AS A
MOST SER-OUS MATTER.
THE EMBASSY THEREFORE, REQUESTS
THE GOVERNMENT OF ARGENTINA TO UNDERTAKE A COMPLETE
INVESTIGATION OF ALL THE FACTS SURROUNDING HER ARREST
AND TREATMENT AND TO FURNISH A FULL REPORT TO THE EMBASSY
AS SOON AS POSSIBLE. NATURALLY, THE EMBASSY ASSUMES THAT
APPROPRIATE DISCIPLINARY AND CRIMINAL PROCEEDINGS WILL BE
TAKEN AGAINST ANY OFFICIAL FOUND BY THE GOVERNMENT OF
ARGENTINA TO BE IMPLICATED IN ANY MISTREATMENT OF MRS.
LOPEZ AND WOULD APPRECIATE BEING KEPT INFORMED OF THE
COMMENCEMENT AND RESULTS OF THE GOVERNMENT'S INVESTIGA-
TION AND OF ANY PROCEEDINGS INITIATED AS A CONSEQUENCE.
IN THIS CONNECTION, THE UNITED STATES RESPECTFULLY
DRAWS THE ATTENTION OF THE MINISTRY TO ARTICLE 9, 10,

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AND 11 OF THE DECLARATION ADOPTED BY RESOLUTION 3452.

AN EARLY REPLY FROM THE MINISTRY WOULD BE APPRECIATED.

THE EMBASSY OF THE UNITED STATES TAKES THIS OPPORTUNITY
TO RENEW TO THE MINISTRY THE ASSURANCES OF ITS HIGHEST
CONSIDERATION. END TEXT.

4. PLEASE CONFIRM DELIVERY OF NOTE. KISSINGER

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